IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Bail Appl..No. 4121 of 2007()

SC.353/2002 of ADDL.SUB COURT,KOLLAM
CRIME NO.29/00 OF OACHIRA POLICE STATION

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PETITIONER/ACCUSED

SHIBU, S/O.CHELLAPPAN, AGED 28 YEARS,
RESIDING AT PUTHENTHARAYIL VEEDU, VADAKKUM MURI
PADINJARU, THAZHAVA VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI. K.SIJU

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
S.I. OF POLICE, OACHIRA POLICE STATION THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 4121 OF 2007

Dated this the 9th day of July, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.376 of the IPC. Investigation is complete. Final report has already been filed. The case has been committed. Sessions Case has been registered before the Additional Assistant Sessions Judge, Kollam. The petitioner had entered appearance and was enlarged on bail also.

2. The case was posted for trial. On that day the petitioner did not appear. The learned Sessions Judge thereupon issued a non-bailable warrant of arrest against the petitioner dismissing the application for exemption filed by the petitioner, it is submitted. According to the petitioner, the matter has been settled before the Family Court. Even the allegation is only that consensual sexual intercourse was on

the basis of a fraudulent promise given. In these circumstances, the learned Sessions Judge must have allowed the application for exemption and must have permitted the petitioner to be represented by his counsel. Issue of non-bailable warrant is unjustified, submits the learned counsel for the petitioner. The petitioner is prepared to appear before the learned Sessions Judge. But he apprehends that the learned Sessions Judge may not consider his application for bail on merits, in accordance with law and expeditiously. The learned counsel for the petitioner therefore prays that directions under Sec.438 and/or 482 of the Cr.P.C. may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Sessions Judge and explain to the learned Sessions Judge the circumstances under which he could not earlier appear before

the learned Sessions Judge. I have no reason to assume that the learned Sessions Judge would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Sessions Judge and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Sessions Judge must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge